

## Commodity Futures Trading Commission

## § 12.404

the Commission's regulations, 17 CFR 10.102(d), except that any party, with leave of the Commission, may file an informal document in lieu of a brief. No brief shall exceed thirty-five (35) pages in length without leave of the Commission.

(e) *Oral argument.* Any party may request, in writing and within the time provided for filing the initial briefs, the opportunity to present oral argument before the Commission, which the Commission may, in its discretion, grant or deny. In the event the Commission affords the parties the opportunity to present oral argument before the Commission, the oral argument shall proceed in accordance with the provisions of § 10.103 of the Commission's regulations, 17 CFR 10.103.

(f) *Scope of review.* On review, the Commission may, in its discretion, consider *sua sponte* any issues arising from the record and may base its determination thereon, or limit the issues to those presented in the statement of issues in the briefs, treating those issues not raised as waived.

[49 FR 6621, Feb. 22, 1984; 49 FR 15070, Apr. 7, 1984]

### § 12.402 Appeal of disposition of less than all claims or parties in a proceeding.

(a) *In general.* Where two or more different claims for relief are presented, or where multiple parties are involved, in a proceeding forwarded pursuant to § 12.26 (b) or (c) of these rules, the Judgment Officer or Administrative Law Judge, may upon his own motion or by motion of a party, direct that an initial decision or other order disposing of one or more, but fewer than all of the claims or parties, shall be final and immediately appealable to the Commission. Such a direction may be made only upon an express determination that there is no just reason for delay. When such a direction is made, a party may appeal the initial decision or order in accordance with the procedure prescribed by § 12.401 of these rules.

(b) *When decision is not appealable.* In the absence of such a direction by the Judgment Officer or an Administrative Law Judge, an initial decision or order disposing of fewer than all of the claims or all of the parties shall be sub-

ject to revision by the decisionmaker at any time before a disposition is made of all remaining claims or parties, and no appeal may be taken to the Commission pursuant to this rule.

### § 12.403 Commission review on its own motion.

(a) *In general.* The Commission may on its own motion, within 30 days after it has been served on all parties, determine to review an initial decision, or other order disposing of all issues in the proceeding as to all claims and all parties, in a proceeding forwarded pursuant to § 12.26 (b) and (c) of these rules. In such event, the Commission may determine the scope of the issues on review, and make provisions for the filing of briefs or, if deemed appropriate, such other means for the parties to present their views. The parties shall be duly notified thereof by the Proceedings Clerk.

(b) *Commission review of a final decision in a voluntary decisional proceeding.* If such action is necessary to prevent manifest injustice, the Commission may, upon its own motion, review a final decision issued pursuant to § 12.106 of these rules by appropriate order filed with the Proceedings Clerk within 30 days after service upon the parties of the final decision. In such event, the Commission may determine the scope of the issue on review, make provisions for the filing of briefs (or, if deemed appropriate, such other means for the parties to present their views). The parties shall be duly notified thereof by the Proceedings Clerk.

### § 12.404 The record of proceedings.

The record of proceedings on appeal before the Commission shall include: The pleadings; motions and requests filed, and rulings thereon; the transcript of the testimony taken at an oral hearing, together with the exhibits filed therein; the transcript of testimony taken during an oral examination by telephone; any statements or stipulations filed in any proceeding; any documents or papers filed in connection with prehearing conferences; such proposed findings of fact, conclusions, and orders and briefs as may have been permitted to be filed in connection with an oral hearing; such

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statements of objections, and briefs in support thereof, as may have been filed in the proceedings; and the initial (or final) decision, or other order disposing of issues in the proceeding.

[49 FR 6621, Feb. 22, 1984, as amended at 59 FR 9638, Mar. 1, 1994]

### § 12.405 Leave to adduce additional evidence.

Any time prior to issuance of its final decision pursuant to §12.406, the Commission may, after notice to the parties and an opportunity for them to present their views, reopen the hearing to receive further evidence. The application shall show to the satisfaction of the Commission that the additional evidence is material, and that there were reasonable grounds for failure to adduce such evidence at the hearing. The Commission may receive the additional evidence or may remand the proceeding to the Judgment Officer or Administrative Law Judge to receive the additional evidence.

### § 12.406 Final decision of the Commission.

(a) *Opinion and order.* Unless the Commission, in accordance with paragraph (b) of this section, orders summary affirmance of the initial decision, the Commission's opinion and order in a proceeding appealed pursuant to §12.401 of these rules shall constitute the Commission's final decision, effective upon service. On review, the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial decision and make any findings or conclusions which in its judgment are warranted based on the record in the proceeding.

(b) *Order on summary affirmance.* If the Commission, in its opinion, finds that the result reached in the initial decision is substantially correct and that none of the arguments on appeal made by the appealing party raise any important question of law or policy, the Commission may, by appropriate order, summarily affirm the initial decision and order without opinion, which shall constitute the Commission's final decision, effective upon service. Unless the Commission expressly indicates otherwise in its order,

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an order of summary affirmance does not reflect a Commission determination to adopt the initial decision, including any rationale contained therein, as its opinion and order, and neither initial decision nor the Commission's order of summary affirmance shall serve as a Commission precedent in other proceedings.

(c) *Filing and service of final decision.* The Commission shall, upon issuance of a final decision pursuant to this §12.406, file the final decision with the Proceeding's Clerk, who shall forthwith serve upon each of the parties a copy of the final decision as well as notice of the effect of a party's failure to pay a reparation award as provided in §12.407 of these rules, and of an aggrieved party's right to obtain judicial review of the final decision pursuant to section 14(e) of the Act, 7 U.S.C. 18(e).

(d) *Date of the reparation order.* For purposes of computing the 30-day period for filing the appeal bond required by section 14(e) of the Act, 7 U.S.C. 18(e), "the date of the reparation order" shall be the date that the Commission's opinion and order (or order of summary affirmance, as the case may be) is filed with the Proceedings Clerk. This date shall be reflected by the date stamp on the first page of the Commission's order.

[49 FR 6621, Feb. 22, 1984, as amended at 53 FR 17692, May 18, 1988]

### § 12.407 Satisfaction of reparation award; enforcement; sanctions.

(a) *Satisfaction of reparation award—*  
(1) *Where initial decision has become the final decision.* Any reparation award ordered in an initial decision, or similar dispositive order (but not a final decision issued pursuant to §12.106 of these rules), shall be satisfied in full within forty-five (45) days after service of the initial decision, unless a timely appeal thereof has been perfected pursuant to §12.401, or unless the Commission, pursuant to §12.403(a), has stayed the effective date of the initial decision.

(2) *Final decision pursuant to §12.406.* Any reparation award ordered in a final decision of the Commission issued pursuant to §12.406 of these rules shall be satisfied in full within fifteen (15) days after service of the final decision, or such other longer period of time as